

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

EDWARD SCHNEIDER,

Debtor.

EDWARD SCHNEIDER,

Appellant,

v.

SN COMMERCIAL L.L.C.,

Appellee.

Case No. 05-60122

Hon. John Corbett O'Meara

OPINION AND ORDER

Edward Schneider appeals a decision of the Bankruptcy Court for the Eastern District of Michigan, which granted judgment in an adversary proceeding to SN Commercial L.L.C. For the following reasons, the decision of the Bankruptcy Court is affirmed.

Background

First National Bank of America loaned Schneider \$795,000 on March 10, 2000, to refinance some commercial rental properties. Schneider represented to First National that the financial statements he supplied to them truly and completely disclosed his financial condition without any material omissions. Schneider further represented that he owned and had good title to the properties free of security interests.

Schneider filed for bankruptcy under Chapter 11 on May 16, 2003, and the case was

subsequently converted to a Chapter 7 case. SN Commercial is the successor in interest to First National, and filed an adversary complaint against Schneider on October 31, 2003, claiming that Schneider obtained the loan by fraud and/or misrepresentation. On April 27, 2004, SN Commercial sent requests for admissions of certain facts to Schneider. Schneider did not respond to these discovery requests in a timely fashion.

SN Commercial moved for summary judgment. Pursuant to Federal Rule of Civil Procedure 36(a), if a request for admission is not answered within 30 days, it is deemed to have been admitted. The bankruptcy court found that allegations contained in the interrogatories were deemed admitted by Schneider and therefore conclusively established that Schneider obtained a loan from SN Commercial's predecessor by making false representations and committing actual fraud, pursuant to 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(2)(B). Accordingly, the Bankruptcy Court found that Schneider's debt was not dischargeable and granted summary judgment for SN Commercial. Neither the complaint nor the summary judgment motion contained a request for entry of a dollar judgment, and the opinion and the order granting summary judgment also did not include a specific dollar amount. A final judgment for SN Commercial was not immediately entered on this matter. Schneider did not seek to withdraw his admissions pursuant to Federal Rule of Civil Procedure 36(b) and did not appeal the Bankruptcy Court's grant of summary judgment. The adversary proceeding was administratively closed.

On January 28, 2005, SN Commercial moved for entry of a specific dollar amount. Schneider objected and attempted to characterize SN Commercial's motion as a motion to alter or modify a judgment. The Bankruptcy Court ordered the case reopened on March 9, 2005, and entered a judgment for SN Commercial with a specific dollar amount on May 18, 2005.

Schneider filed a notice of appeal on May 20, 2005.

Law and Analysis

Schneider argues that the grant of summary judgment was effectively a default judgment and that SN Commercial did not properly seek a dollar amount in its request for a default judgment, pursuant to Fed. R. Civ. P. 54(c). However, the order in this case was clearly a summary judgment order, decided based on the admissions on file pursuant to Fed. R. Civ. P. 56. As such, Rule 54(c) is inapplicable. Schneider further argues that SN Commercial's motion for entry of judgment should have been treated as a motion to alter or amend a judgment under Fed. R. Civ. P. 59. This is not the case. Pursuant to Fed. R. Civ. P. 58, a judgment is a separate document from an order granting summary judgment. No separate judgment was entered in this adversary proceeding prior to SN Commercial's request for judgment. As such, there was no judgment to amend or alter and Fed. R. Civ. P. 59 would also be inapplicable.

Accordingly, the Bankruptcy Court's entry of judgment for SN Commercial is

AFFIRMED.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: September 15, 2005